Melewar Leisure Sdn Bhd v Danaharta Managers Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–827 OF 2006
KN SEGARA, SULONG MATJERAIE AND JEFFREY TAN JJCA
13 APRIL 2010

Civil Procedure — Summary judgment — Appeal — Triable issues — Whether defendant raised triable issues in plaintiff's application for summary judgment

United Malayan Banking Corp ('UMBC') granted Melewar Leisure Sdn Bhd ('the first defendant') a USD10m banker's guarantee for a 10-year term loan ('the facility') from UMBC International Bank Ltd (now known as Danaharta Managers Ltd or DML). As security for the facility, the first defendant executed a land charge over its lease over a piece of land ('the charged property'). The second and third defendants also guaranteed the facility. When Danaharta Managers Sdn Bhd, the plaintiff, acquired the non-performing loans of UMBC the rights of UMBC with respect to the facility also vested upon the plaintiff. Thereafter, the first defendant executed its option to convert the USD term loan with DML to a Malaysian Ringgit term loan with the plaintiff. In order to facilitate this conversion, and upon DML's demand under the plaintiff's bank guarantee, the plaintiff effected a payment of USD9,650,859.83 to DML. The first defendant, which was notified about this payment, thus became indebted to the plaintiff in the sum of USD9,650,859.83 (or RM36,676,162.61) with interest. When the first defendant defaulted in its repayment, the plaintiff filed the present writ against it and the two guarantors to the facility. The plaintiff then proceeded to exercise its rights as chargee of the charged property and the sum realised from the sale of that property, which amounted to RM38.008m, was used to reduce the outstanding sums due from the first defendant. The plaintiff applied for summary judgment against the first defendant and its guarantors for the outstanding balance, which amounted to RM10,960,008.90 as at 30 June 2005. The senior assistant registrar ('SAR') allowed the plaintiff's application with costs. The first defendant appealed to a judge in chambers against the summary judgment but the judge upheld the SAR's decision and hence the present appeal. The first defendant's grounds of appeal were that the amount claimed in the O 14 application was lower than that stated in the statement of claim and that the plaintiff was amending its pleadings by affidavits; that there was an alleged breach of a purported collateral contract between the first defendant and the plaintiff to sell the charged property together with an adjoining piece of land; that the first defendant was placed under duress to accept a higher USD/Ringgit exchange rate; and that there were manifest errors on the certificate of indebtedness. The main issue for determination in this

appeal was whether the defendant had raised any triable issues to the plaintiff's claim.

Held, dismissing the appeal with costs:

(1) The plaintiff had adequately explained that it filed the O 14 application after the sale proceeds of the charged property amounting to RM38.008m had been used to reduce the sum owed by the first defendant under the statement of claim. As such the plaintiff's claim in the O 14 application was for the balance outstanding after deducting the sale proceeds and there was no need to amend the statement of claim for the making of the adjustment (see paras 15–16).

(2) The first defendant's submission that there was an alleged breach of a purported collateral contract between the first defendant and the plaintiff to sell the charged property together with an adjoining piece of land was a non-issue. The plaintiff had lawfully disposed of the charged property and thereby discharged its duty as chargee to the chargor of the charged property. It was not obliged to undertake a joint sale of the properties (see paras 17–18 & 20).

(3) Since the first defendant had instructed the conversion of the USD facility to a Ringgit loan at the current rate and raised no objection to the said exchange rate, it was estopped from contending that it had not agreed to such a rate. The amount owed by the first defendant to the plaintiff was the amount that was honoured by the plaintiff under the bank guarantee and the alleged conversion of the wrong amount was also without merit (see paras 23–24 & 27).

(4) There were no manifest errors on the certificate of indebtedness, which was conclusive evidence of the first defendant's debt due to the plaintiff (see para 29).

(5) The first defendant had not raised any triable issues or any valid defence to the plaintiff's claim. As such the plaintiff was entitled to summary judgment as ordered by the High Court (see para 30).

[Bahasa Malaysia summary

United Malayan Banking Corporation ('UMBC') memberikan Melewar Leisure Sdn Bhd ('defendan pertama tersebut') satu gerenti bank sebanyak USD10 juta untuk tempoh sepuluh tahun ('kemudahan tersebut') dari UMBC International Bank Bhd (Danaharta Managers Ltd atau DML). Sebagai jaminan bagi kemudahan tersebut, defendan pertama menandatangani gadaian sebagai pajakannya ke atas sebidang tanah ('hartanah yang digadai'). Defendan kedua dan ketiga juga menjamin kemudahan tersebut. Apabila Danaharta Managers Sdn Bhd, plaintif, mengambil pinjaman-pinjaman tak berbayar daripada UMBC hak-hak UMBC terhadap

kemudahan tersebut terletakhak kepada plaintif. Selepas itu, defendan pertama melaksanakan opsyennya untuk menukar pinjaman berkala USD dengan DML kepada pinjaman berkala Malaysia Ringgit dengan plaintif. Supaya memudahkan penukaran ini, dan atas permintaan DML di bawah bank gerenti plaintif, plaintif membuat bayaran USD9,650,859.83 kepada DML. Defendan pertama, yang telah diberitahu tentang pembayaran ini, menjadi penghutang plaintif bagi jumlah USD9,650,859.83 (atau RM36,676,162.61) dengan faedah. Bila defendan pertama gagal membuat pembayaran baliknya, plaintif memfailkan writ ini terhadapnya dan dua penjamin kemudahan tersebut. Plaintif kemudiannya terus melaksanakan haknya sebagai pemegang gadaian hartanah yang digadai dan jumlah yang diperolehi dari jualan hartanah tersebut, yang berjumlah RM38.008 juta, digunakan untuk mengurangkan jumlah baki yang tertunggak daripada defendan pertama. Plaintif memohon untuk penghakiman terus terhadap defendan pertama dan penjamin-penjaminnya untuk baki tertunggak, yang berjumlah RM10,960,008.90 setakat 30 Jun 2005. Penolong kanan pendaftar ('PKP') membenarkan permohonan plaintif dengan kos. Defendan pertama merayu kepada hakim dalam kamar terhadap penghakiman terus tetapi hakim mengesahkan keputusan PKP dan justeru rayuan ini. Alasan rayuan defendan pertama adalah bahawa jumlah yang dituntut dalam permohonan A14 adalah lebih rendah daripada yang dinyatakan dalam pernyataan tuntutan dan bahawa plaintif meminda plidingnya menggunakan afidavit-afidavit; bahawa terdapat satu pelanggaran kontrak kolateral yang didakwa antara defendan pertama dan plaintif bagi menjual hartanah yang digadai bersama dengan sebidang tanah yang bersempadannya; bahawa defendan pertama telah diletakkan dalam dures untuk menerima satu kadar pertukaran USD/Ringgit yang lebih tinggi; dan terdapat kesilapan-kesilapan yang nyata pada sijil keberhutangan. Isu utama bagi penentuan dalam rayuan ini adalah sama ada defendan telah menimbulkan apa-apa isu yang perlu dibicarakan terhadap tuntutan plaintif.

Diputuskan, menolak rayuan dengan kos:

(1) Plaintif telah dengan secukupnya menerangkan bahawa ia memfailkan permohonan A14 selepas hasil jualan hartanah yang digadai berjumlah RM38.008 juta telah digunakan bagi mengurangkan jumlah yang terhutang oleh defendan pertama di bawah pernyataan tuntutan. Oleh itu tuntutan plaintif dalam permohonan A14 adalah untuk baki tertunggak selepas menolak hasil jualan tersebut dan tidak ada keperluan bagi meminda pernyataan tuntutan untuk pembuatan pelarasan (lihat perenggan 15–16).

(2) Hujahan defendan pertama bahawa terdapat satu pelanggaran kontrak kolateral yang didakwa antara defendan pertama dan plaintif bagi menjual harta yang digadai bersama dengan sebidang tanah yang bersempadannya bukanlah satu isu. Plaintif dengan sahnya menjual

hartanah yang digadai dan melaksanakan tugasnya sebagai pemegang gadaian kepada penggadai hartanah yang digadai. Ia tidak ada obligasi untuk menjalankan suatu jualan bersama hartanah-hartanah tersebut (lihat perenggan 17–18 & 20).

(3) Memandangkan defendan pertama telah mengarahkan penukaran kemudahan USD kepada pinjaman Ringgit pada kadar semasa dan tiada membuat bantahan terhadap kadar pertukaran, ia adalah diestop daripada menyatakan bahawa ia tidak bersetuju dengan kadar sedemikian. Jumlah yang terhutang oleh defendan pertama kepada plaintif adalah jumlah yang dibayar oleh plaintif di bawah gerenti bank dan penukaran yang dikatakan bagi jumlah salah adalah juga tanpa merit (lihat perenggan 23–24 & 27).

(4) Tidak ada kesilapan-kesilapan yang nyata pada sijil keberhutangan, yang merupakan bukti muktamad hutang defendan pertama kepada plaintif (lihat perenggan 29).

(5) Defendan pertama tidak menimbulkan apa-apa isu yang perlu dibicarakan atau apa-apa pembelaan yang sah terhadap tuntutan plaintif. Oleh itu plaintif berhak kepada penghakiman terus seperti yang diperintahkan oleh Mahkamah Tinggi (lihat perenggan 30).]

Notes

For cases on appeal, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 6883–7049.

Cases referred to

Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor [2006] 2 MLJ 685, FC (refd)

Citibank NA v Ooi Boon Leong & Ors [1981] 1 MLJ 282, FC (refd)

Krishnamurthy & Anor v Malayan Finance Corporation Bhd [1986] 2 MLJ 134, SC (folld)

Legislation referred to

Rules of the High Court 1980 O 14

Appeal from: Suit No D3–22–330 of 2005 (High Court, Kuala Lumpur)

Yap Mow Jiun (Heng & Co) for the appellant.
Yoong Sin Min (Chung Ai Lei with her) (Shook Lin & Bok) for the respondent.

KN Segara JCA:

[1] This is an appeal by the appellant company ('the first defendant') against the summary judgment entered by the respondent ('the plaintiff') in the High Court under O 14 of the Rules of the High Court 1980.

[2] On 31 December 1994 a facility agreement was executed between United Malayan Banking Corp Bhd ('UMBC') and the first defendant for a USD10m banker's guarantee/10-year term loan ('the facility').

[3] The facility was for UMBC to issue a guarantee for the first defendant's term loan of USD10m with UMBC International Bank (L) Ltd ('UMBCL'). The first defendant had the option to utilise the facility to pay UMBCL and convert the same into a RM term loan with UMBC.

[4] As security for the facility, the first defendant executed a land charge over its lease over a land ('the charged property'). Two persons, that is, the second and third defendants, also guaranteed the facility.

[5] On 29 March 1995, pursuant to the facility, UMBC issued a bank guarantee, on behalf of the first defendant, for USD10m in favour of UMBCL (now known as Danaharta Managers (L) Ltd ('DML').

[6] The plaintiff, by reason of its acquisition of non-performing loans and, the vesting certificate No 1999–00092–DM, issued under seal on 27 August 1999, had all the rights of UMBC with respect to the facility, vested upon it (the plaintiff).

[7] On 13 April 2001 the first defendant exercised its option to convert the USD term loan with DML to a Malaysian Ringgit term loan with the plaintiff. It faxed as follows:

> ...
>
> CONVERSION OF USD7.5M LOAN
>
> We are pleased to advise that the Melewar Leisure Sdn Bhd Board *has approved* the proposed conversion of the *above USD loan at the current exchange rate*. Kindly proceed to do the necessary to convert *the above loan into its RM equivalent immediately*.
>
> ...

(Emphasis added.)

[8] On 5 June 2001, in order to facilitate the conversion, and on DML's demand under the plaintiff's bank guarantee, the plaintiff effected payment to DML the sum of USD9,650,859.83 (equivalent of RM36,676,162.61). This payment was notified to the first defendant on 11 June 2001 as follows:

> ...
>
> BANK GUARANTEE NO. CUKL/BG NO.95/32/F/AMD/10E FOR PRINCIPAL SUM OF USD7, 500,000.00

Arising from your letter dated 13 April 2001 to Danaharta Managers (L) Ltd ('DMLL'), instructing DMLL to convert the USD loan to be denominated in Ringgit and consequent demand by DMLL through a letter dated 5 June 2001 (photocopy enclosed) on the abovementioned Bank Guarantee issued by us, we had on 5 June 2001 honoured a claim totalling USD9, 650,859.83 (MYR equivalent of RM36, 676,162.61) in favour of Danaharta Managers (L) Ltd.

...

[9] The first defendant thus became indebted to the plaintiff in the sum of RM36,676,162.61 as at 5 June 2001 together with interest thereon. The first defendant defaulted in repayment.

[10] On 10 March 2005 the plaintiff filed a writ of summons against the first defendant and its two guarantors. An amended statement of claim was filed on 26 May 2005.

[11] On 17 June 2005 the plaintiff exercised its rights as chargee of the charged property and realised the same for a sum of RM38.008m, which was utilised towards reduction of the outstanding sums due from the first defendant.

[12] On 17 August 2005 the plaintiff applied for summary judgment against the first defendant and its two guarantors for the balance outstanding sum of RM10,960,008.90 as at 30 June 2005. The senior assistant registrar ('SAR') allowed the plaintiff's application with costs on 17 January 2006. On appeal to judge in chambers by the first defendant, the learned judge on 18 July 2006 upheld the SAR's decision. The two guarantors (second and third defendants) did not appeal against the SAR's decision. We have perused the learned judge's grounds of judgment and are in full agreement with him that the first defendant's appeal is without merits and that there are no triable issues.

[13] The first defendant raised almost the same issues that it had raised before the High Court to deny the plaintiff the summary judgment, in its present appeal before us. We are not convinced that the plaintiff should be denied the summary judgment on the basis of the said issues.

THE PLAINTIFF'S PLEADINGS ALLEGEDLY DEFECTIVE

[14] The first ground of appeal concerns the issue of whether the plaintiff was permitted to claim an amount in the O 14 application which was lower than the amount claimed in the amended statement of claim. The first defendant contended that by claiming a lower sum, the plaintiff was improving or amending its pleadings by affidavits.

[15] In the present appeal before us the plaintiff had in its affidavits fully explained the differing amounts claimed in the amended statement of claim and the O 14 application, namely:

(a) the writ of summons was filed on 10 March 2005 and the amended statement of claim was filed on 26 May 2005, that is, before the charged property was realised on 17 June 2005;

(b) the sale proceeds of the charged property amounting to RM38.008m, which went towards reducing the sum owing by the first defendant, were only received by the plaintiff on 17 June 2005;

(c) therefore, the particulars of the sale and reduction of the debt by crediting the proceeds of sale could not have been pleaded in the amended statement of claim; and

(d) the plaintiff's claim in the O 14 application was filed on 17 August 2005, where the claim was for the balance outstanding sum of RM10,960,008.90 (including the outstanding principal amount of RM9,327,017.47) as at 30 June 2005, after deducting the sale proceeds.

(e)

[16] We concur with the Supreme Court in *Krishnamurthy & Anor v Malayan Finance Corporation Bhd* [1986] 2 MLJ 134 when it held, inter alia, that there was no need to amend the statement of claim for the making of the adjustment:

> (1) the difference between the amount claimed and the amount to be signed in the judgment was fully explained by the respondents to the effect that credit had to be given for the value of the cars which the respondents repossessed between the date of the writ and the date of the summons in chambers. There was no need to amend the statement of claim for the making of the adjustment.

ALLEGED OBLIGATION ON THE PLAINTIFF TO JOINTLY SELL PROPERTIES

[17] The second ground of appeal relates to an alleged breach of a purported collateral contract between the first defendant and the plaintiff to sell the charged property together with an adjoining land ('the second property').

[18] The first defendant never pleaded nor made any averments to any 'collateral contract' between the parties. We are unanimous that this ought to be a non-issue. In any event, the plaintiff had informed the first defendant in

writing that the plaintiff was only the chargee of the charged property and not of the second property. It was therefore not able to offer sale of the second property to third parties.

[19] We are unanimous that the plaintiff was neither obliged to undertake a joint sale nor was it in a legal position to do so. The letters of the plaintiff to the first defendant, dated 9 March 2004 and 22 April 2004, clearly sets out the position.

9 March 2004

...

Credit Facility Granted To Melewar Leisure Sdn Bhd ('Borrower') by Sime Bank Berhad and Acquired by Danaharta Managers Sdn Bhd (the 'Facility')

We refer to your letters both dated 26.2.2004.

1. As you know, we are the chargee of the lease over Lot No. 58 ('the Charged Land') only and are entitled to exercise our rights as chargee over the same at our discretion. We are not the chargee of P.T. 1, which is charged to other lenders. In view of the previous indulgences granted to you earlier to resolve your debt with us and your inability thus far to do so, we are compelled to proceed to realize the Charged Land. We therefore regret we are unable agree to your request for us to withhold our realization of the Charged Land pending the joint realization of P.T. 1 as well.

2. As you know, we have invited bids for the purchase of the Charged Land by way of of public/open tender. The tender closed on 26 February 2004. We have received a number of bids and are presently considering those bids.

3. However, in response to your aforesaid letters, we are prepared to consider a withdrawal by you of the Charged Land at the withdrawal sum of RM38,100,000.00 subject to the following conditions:-

(i) you are to revert to us with your confirmation in writing of your acceptance of this offer together with a banker's cheque for 10% of the withdrawal sum (i.e. RM3,810.000,00) within 14 days from date hereof;

(ii) that the balance 90% of the withdrawal sum shall be paid to us within three (3) months from date hereof.

4. Kindly note that if we fail to hear from you within 14 days from the date hereof with your acceptance and payment of the 10% of the withdrawal sum as above stated, we shall be compelled to continue with the tender sale exercise and shall make such decision as we deem fit with regard to the sale of the Charged Land (including awarding the tender). You will note that should we choose to make an award on any bid, we shall no longer be at liberty in law to consider any offer from you for redemption of the Charged Land.

22 April 2004

...

RE: Lease under PN 9400, Lot No. 58, Mukim 31, District Kuala Lumpur, Wilayah Persekutuan ('Charged Property')

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1. We refer to your letter of 8.4.2004

2. We note the contents of the aforesaid letter. As you well know Danaharta is not a chargee of HSD 50341, PT1, Bandar and Daerah Kuala Lumpur ('PT1') and has no interest in the land. As we have informed you, Danaharta is therefore unable to make any representations to third parties with regard to PT1 or offer the same for sale.

3. As for your comment that our request for payment of RM38,100,000.00 for withdrawal of the Charged Property from the tender sale was a significant increase from the 'previous agreed sum of RM34,300,000.00', we wish to place on record the following:

(i) There was no 'previously agreed sum' as suggested. Danaharta was prepared to allow Melewar Leisure Sdn Bhd to redeem the Charged Property against a payment of RM34,300,000.00 subject to same being paid in accordance with the terms of our letters of 11.3.2003 and 18.7.2003.

(ii) You had been unable to meet those terms, not even the payment of a deposit by 31.7.2003.

(iii) It is also to be noted that our aforesaid letters were issued about a year ago and the sum we would consider for the redemption of the Charged Property cannot be static.

4. Finally, on a without prejudice basis, we are looking into your request to notify the successful bidder for the Charged Property of your offer to sell PT1.

[20] We find that the plaintiff had lawfully disposed of the charged property via an open tender sale to the highest bidder and, at all times fulfilled its duty as chargee to the charger of the charged property. We find there was no obligation, morally or legally, for the plaintiff to jointly sell the properties.

ALLEGED DURESS ON THE FIRST DEFENDANT TO ACCEPT EXCHANGE RATE

[21] The third ground of appeal relates to the issue of whether the first defendant was under any form of duress causing it to accept a higher USD/Ringgit exchange rate.

[22] It is not disputed that that the first defendant had issued a letter dated 21 May 1999 expressly confirming that the rate of conversion for the US Dollar loan to the Ringgit term loan shall be based on the prevailing conversion rate at the time of conversion, notwithstanding the provision of section 4.01(b) of the facilities agreement. The letter reads:

> 21 May 1999
>
> ...
>
> TERM LOAN FACILITY UP TO USD10 MILLION
>
> We refer to the above matter.
>
> We further refer to the letter of offer dated 11th May, 1994 from Sime International Bank (L) now known as Danaharta Managers (L) Ltd ('Sime Labuan') and The Facilities Agreement dated 13 December, 1994 between Sime Bank (M) Bhd ('Sime Bank') and ourselves whereby we were granted the option and right to convert the US Dollars Term Loan to Ringgit Malaysia equivalent.
>
> In consideration of you agreeing to allow us to continue with the banking facilities under the Term Loan Agreement with Sime Labuan and the Guarantee Facility Agreement with Sime Bank based on the terms and conditions stated in *your letter dated 19th May, 1999*, we hereby confirm and agree that *notwithstanding the provisions of Section 4.01(b) of the Facilities Agreement*, in the event we are desirous of exercising our option to convert the US Dollars Term Loan to Ringgit Malaysia equivalent, *the rate of conversion shall be based on the prevailing conversion at the time of conversion*.

(Emphasis added.)

[23] We agree with the judge's observation in the court below that:

(a) it was the first defendant that had, on 13 April 2001, instructed the conversion of the US Dollar facility to a Ringgit loan at the current rate;

(b) the plaintiff had by its letter dated 11 June 2001 notified the first defendant that the plaintiff had paid DML the bank guarantee sum of USD9,650,859.83, equivalent to RM36,676,162.61 (which reflected the exchange rate of USD1:RM3.80);

(c) the first defendant had at all material times raised no objection to the said exchange rate.

[24] We are unanimous that the High Court judge was right, in such circumstances, to hold that the first defendant was estopped from contending that it had not agreed to such a rate. The attempt to raise 'duress' as an issue by the first defendant is manifestly flawed and is totally unsubstantiated. The defence must be rejected out-right.

ALLEGED CONVERSION OF WRONG AMOUNT

[25] The fourth ground of appeal relates to the issue of whether the first defendant had only agreed to convert the principal sum of USD7.5m of its loans to Ringgit.

[26] The amount of the Ringgit term loan was the sum which was paid by the plaintiff pursuant to its bank guarantee obligations to DML and that sum was USD9,650,859.83 (RM36,676,162.61). The said USD sum paid comprised the principal sum of USD7.5m, interest and other charges claimed by DML and such sum was within the plaintiff's bank guarantee limit of USD10m. The plaintiff duly notified the first defendant of the actual amount converted by its letter dated 30 January 2003. The first defendant made no complaints and made part payments as well as negotiated with the plaintiff to settle the debt.

> 30th January 2003
>
> ...
>
> CREDIT FACILITY (IES) GRANTED BY SIME BANK BHD AND ACQUIRED BY DANAHARTA MANAGERS SDN BHD
>
> We refer to your letter dated 24th January 2003
>
> Kindly be advised that the USD7.5 million Bank Guarantee Facility was converted into a RM36.68 Term Loan Facility ('TLF') and not into a RM28.5 million TLF as stipulated in the aforementioned letter.
>
> ...

[27] We agree with the High Court judge that the amount owed by the first defendant to the plaintiff was the amount that was honoured by the plaintiff under the bank guarantee upon DML's demand. The alleged conversion of the wrong amount is without merit.

ALLEGED MANIFEST ERROR IN THE CERTIFICATE OF INDEBTNESS

[28] The fifth ground of appeal concerns the issue of whether there was any manifest error in the plaintiff's certificate of indebtedness. The deputy general manager, Recovery Operations, of the plaintiff issued a 'STATEMENT OF INDEBTEDNESS' dated 1 August 2005 certifying that the first defendant was indebted to the plaintiff as at 30 June 2005 in the sum of RM10,960,088.90 (including outstanding principal amount of RM9,327,017.47) together with interest thereon at the rate of 2%pa above the base lending rate of Malayan Banking Bhd and a further late payment interest

of 1%pa on all overdue sums, from 1 July 2005 to date of full payment. Under section 6.02 of the facilities agreement the said certificate was binding on the first defendant unless manifest errors on the same can be shown.

section 6.02 *Statement by Bank*

> If and when any of Facilities shall be cancelled withdrawn or revoked or the account in respect thereof shall be closed, *any statement or statements issued* by the General Manager, Manager, Assistant Manager, Sub-Manager, Secretary, Accountant or any other duly authorised officer of the Bank from time to time *as to the amount of such balance* and the moneys and liabilities from time to time incurred or due to the Bank *from the Borrower shall be deemed* to be accepted by the Borrower as *final and conclusive save for manifest errors*, for all purposes whatsoever including for the purpose of legal proceedings.
>
> (Emphasis added.)

[29] We have no reason to disturb the learned judge's findings that there were no manifest errors on the certificate of indebtedness. The first defendant's indebtedness may be ascertained conclusively by a certificate — it is conclusive evidence of the debt due to the bank: see *Citibank NA v Ooi Boon Leong & Ors* [1981] 1 MLJ 282; *Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor* [2006] 2 MLJ 685.

[30] We are unanimous that the first defendant had not raised any triable issues at all and had no valid defence of any merit to the plaintiff's claim. The plaintiff was entitled to summary judgment as ordered by the High Court.

[31] In the above circumstances, the appeal is dismissed with costs fixed at RM1,000. Deposit to respondent to account of costs.

Appeal dismissed with costs.

Reported by Kohila Nesan